IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1160 OF 2004

The State of Maharashtra ..Appellant

V/s.

Hiralal Sairaj Kankariya ..Respondent

Mrs.M.H.Mhatre APP for Appellant/State.

Coram : R.S.Mohite,J

Date :10th January, 2006.

PC

1. This is an appeal filed by the State impugning a Judgment and order passed by the JMFC, Malegaon, on 25.5.2004. On perusal of the impugned judgment, it can be seen that the same is passed on cogent and acceptable reasons. The accused was the owner of M.G.Agharkar petrol pump situated at old Bombay-Agra road. The complainant took a sample of diesel and petrol and sent it for testing. The test report indicated that the sample was not as per standard and therefore, prosecution was lodged. The finding of the trial Court is there are serious descripencies in the evidence relating to taking of sample. One of the panch (PW 3) had not supported the prosecution case and the other panch has not been examined. PW-4 stated that the sample was

taken by tying a bottle and dipping the bottle in the outlet of petrol and diesel whereas PW-5 and PW-6 had deposed that the sample was taken from the regular outlet of the pump. There is also discrepency in the evidence relating to the code mentioned on the sample bottle. A different code is mentioned in the testing report. No code register is found to have been maintained in the office of the complainant and he admitted that there is no register in the office to indicate as to which code is given to which sample. The list of coding number given is made on loose papers and the Court has held that the same could be prepared at any time. In these circumstances, not a fit case to interfere. Hence leave is refused and consequently, appeal stands dismissed.

(R.S.Mohite,J)